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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

KEVIN REDD,

Defendant and Appellant.

B209305

(Los Angeles County
Super. Ct. No. NA077336)

APPEAL from a judgment of the Superior Court of Los Angeles County,
James B. Pierce, Judge. Affirmed.

Murray A. Rosenberg, under appointment by the Court of Appeal, for
Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant
Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Keith H.
Borjon and A. Scott Hayward, Deputy Attorneys General, for Plaintiff and Respondent.

After Kevin G. Redd entered a gas station convenience store and purchased cigarettes with a counterfeit \$50 bill, he was convicted by jury of second degree commercial burglary (Pen. Code, § 459)¹ (count 1) and forgery (count 2) (§ 476). In a bifurcated proceeding, the trial court found Redd had previously served a separate prison term for a felony (§ 667.5, subd. (b)). The trial court sentenced Redd to an aggregate state prison term of four years. Redd's sole contention on appeal is the court erred by imposing separate punishment for the two offenses in violation of section 654.² We correct a clerical error on the minute order and abstract of judgment and affirm the judgment as orally pronounced.

PROCEDURAL BACKGROUND³

In sentencing Redd, the trial court stated, "It is the judgment and sentence of this court, I'm going to give you the high term for three years. The 459 and the 476, they merge. And so there's no additional time as to counts 1 and 2; that they were both committed by this individual, that is, he entered and then he committed this counterfeiting or trying to pass this counterfeit bill. So the high term is three years. . . . Further, the court having found the [section] 667.5[subdivision] (b) prior to be true, it is the judgment and sentence of this court that he's hereby sentenced for an additional and consecutive one year for a total aggregate term of four years in state prison."

¹ Statutory references are to the Penal Code.

² Section 654 prohibits multiple punishment for "a single act or omission, or an indivisible course of conduct." (*Neal v. State of California* (1960) 55 Cal.2d 11, 19.)

³ We need not summarize the trial evidence because the facts underlying Redd's convictions are not relevant to this appeal.

The amended minute order of the sentencing hearing and the amended abstract of judgment both reflect the imposition of concurrent three-year upper terms on counts 1 and 2, plus the one-year prior prison term enhancement.⁴

DISCUSSION

The parties do not dispute the oral pronouncement of judgment controls over the clerk's minute order; and any discrepancy between the two is presumed to be clerical error in the minute order (*People v. Farell* (2002) 28 Cal.4th 381, 384, fn. 2; *People v. Mesa* (1975) 14 Cal.3d 466, 471), which can be corrected at any time to reflect the court's oral pronouncement. (See *People v. Mitchell* (2001) 26 Cal.4th 181, 183, 185-188.)⁵ Accordingly, we order the minute order of the sentencing hearing and the abstract of judgment corrected to properly reflect imposition of the three-year upper term on second degree commercial burglary(count 1), sentencing stayed on forgery (count 2) pursuant to section 654, and imposition of the one-year prior prison term enhancement.

DISPOSITION

The judgment is affirmed. However, the superior court is directed to prepare a corrected minute order and to prepare and forward to the Department of Corrections and Rehabilitation a corrected abstract of judgment showing imposition of the upper term of three years on count 1, second degree commercial burglary, and sentencing stayed on

⁴ By nunc pro tunc order, the trial court amended the original minute order and abstract of judgment to add the erroneously omitted one-year term on the section 667.5, subdivision (b) enhancement.

⁵ Redd's assertion to the contrary notwithstanding, the fact the later correction to the original minute order and abstract of judgment was limited to adding the prior prison term enhancement does not indicate the trial court "was determined" to sentence Redd concurrently on count [2]."

count 2, forgery, pursuant to section 654, and imposition of the one-year prior prison term enhancement.

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WOODS, Acting P. J.

We concur:

ZELON, J.

JACKSON, J.